

Board of County Commissioners
Leon County, Florida

Policy No. 05-5

Title: Flooded Property Acquisition and Management Program

Date Adopted: June 10, 2008

Effective Date: June 10, 2008

Reference: Board Policy No. 03-01, Approval Authority for the Acquisition, Disposition, and Leasing of Real Property

Policy Superseded: Policy No. 05-5, "Flooded Property Acquisition Program", adopted June 14, 2005, amended August 30, 2005; Policy No. 03-10, "Flooded Property Acquisition Program," adopted June 10, 2003, amended February 24, 2004; Policy No. 02-11, "Flooded Property Acquisition Program", adopted January 28, 2002, amended February 25, 2003

It shall be the policy of the Board of County Commissioners of Leon County, Florida (hereinafter the "Board") that amended Policy 05-5, Flooded Property Acquisition Program, adopted by the Board on August 30, 2005, is superseded, and an amended policy is hereby adopted, to wit:

Article 1: Authority, Intent, Purpose, and Scope

- A. The authority set forth herein is delegated to the County Administrator, or designee.
- B. The intent of this Policy, in accordance with the Board's findings and declarations set forth in Resolution 05-16, Relief For Owners of Flooded Properties (hereinafter the "Resolution"), which is incorporated herein by this reference, is to provide assistance and relief for the owners of Flooded Properties (defined hereinbelow) by acquiring their properties through a means which provides them the opportunity to relocate to a safer home. In addition, this Policy is intended to provide a means by which any and all County-owned Flooded Properties are protected from further use for residential occupancy with the recording and attachment of Restrictive Covenants (defined hereinbelow) to run with the land in perpetuity. This Policy is not intended to alter the Board's position regarding the County's sovereign immunity against any claims in tort for negligence and trespass, nor is it intended to alter the Board's position that the County has no liability for its valid issuance of development permits in accordance with the laws, ordinances, and regulations of the state of Florida and Leon County, which permits may have presently, or in the past, resulted in flooding due to an increase in stormwater runoff.

- C. The purpose of this Policy is to establish a uniform and clear policy and procedure to ensure proper accountability and legal consistency in the acquisition, management, and future use of Flooded Properties (defined hereinbelow). Furthermore, these policies and procedures shall be followed, along with all applicable laws and professional ethics, in order to ensure fair and equitable treatment to the County, the general public, and all affected property owners.
- D. This Policy shall govern any and all acquisitions of Flooded Properties (defined hereinbelow) selected for acquisition by the County in accordance with any of the Board's current or future policies, programs, or ordinances, as well as those Flooded Properties acquired by other means including, but not limited to, tax deed, foreclosure, and exchange. This Policy shall provide the exclusive policy and procedure for acquiring Flooded Properties and for managing the use of all of the County's Flooded Properties, and shall supersede any and all provisions of other Board policies to the extent that such other provisions may be inconsistent with this Policy including, but not limited to, Policy No. 03-01, Approval Authority for the Acquisition, Disposition, and Leasing of Real Property.

Article 2: Definitions

- A. Acquisition Agent: the Public Works staff person assigned to acquire Flooded Properties by Purchase and to manage all County-owned Flooded Properties in accordance with this Policy and the Written Procedures.
- B. Adjusted Appraisal Amount: the appraiser's opinion of value of a Flooded Property proposed for Purchase, reduced by any Duplication of Benefits.
- C. Affidavit: the Affidavit of Owner(s) For Duplication of Benefits.
- D. Affidavit of Owner(s) For Duplication of Benefits: the sworn acknowledgement of an Owner or Owners attesting to the receipt of any disaster-related repair assistance funds as the result of a flooding event on the Owner's or Owners' Flooded Property.
- E. Appraisal Assumption: the assumption to be included in the scope of appraisal of a Flooded Property proposed for Purchase, as follows: the Flooded Property shall be appraised under the assumption that the property is not located in a flood hazard area and has experienced no known flood events.
- F. Board: the Leon County Board of County Commissioners.
- G. Comparable Replacement Property: a property determined to be a comparable replacement for the subject Flooded Property proposed for Purchase and which is available for sale on the date of the appraisal.
- H. Comparable Replacement Property Premium: the additional dollar amount in excess of the Adjusted Appraisal Amount which would be necessary to pay to the Owner at closing in order to provide the Owner with sufficient funds to purchase a Comparable Replacement Property.

- I. County: Leon County, Florida.
- J. Duplication of Benefits: the total amount of any disaster-related repair assistance paid to the Owner reduced by any amounts documented by receipts showing that the repair assistance funds were used for their intended purposes. The types of disaster-related repair assistance which would be considered in determining whether there is a duplication of benefits include, but are not limited to, private flood insurance proceeds, federally assisted grants and loans, and any state assisted grants and loans.
- K. Duplication of Benefits Fact Sheet: an informational document provided to an Owner explaining the concept of Duplication of Benefits and how it may affect the Owner in the Purchase process.
- L. Flooded Property: a property meeting the following criteria: (i) any property selected for future acquisition by the County in accordance with any of the Board's current or future policies, programs, or ordinances intended to provide relief to owners of flooded properties, provided, however, that if any such property no longer lies within the unincorporated area of the County due to an annexation or other such means, it shall no longer be deemed a Flooded Property and shall immediately be removed from consideration for acquisition by the County; or (ii) any property acquired by the County by tax deed, foreclosure, exchange, or other such means and which thereafter is determined to be unsuitable for resale or other disposition because of its tendency to flood.
- M. Owner(s): the fee simple owner or owners of a Flooded Property not yet acquired by the County.
- N. Permit: the Special Restricted-Use Permit which authorizes the Permittee to use the Permit Area within a County-owned Flooded Property in accordance with the terms and conditions therein.
- O. Permit Area: the area lying within the boundaries of a County-owned Flooded Property authorized to be used and occupied by a Permittee in accordance with the terms and conditions a Permit.
- P. Permittee: the individual or legal entity authorized to use and occupy the Permit Area within a County-owned Flooded Property in accordance with terms and conditions of a Permit.
- Q. Policy: the Flooded Property Acquisition and Management Program originally adopted by the Board on June 14, 2005 and most recently amended on June 10, 2008, and as may be amended from time to time thereafter.
- R. Program Administrator: the individual assigned by the Public Works Director with direct oversight of the Acquisition Agent(s).
- S. Public Works: the Leon County Department of Public Works.

- T. Purchase: the County's acquisition of a Flooded Property in which the consideration given by the County to the Owner is cash paid at closing. For purposes of this Policy, a Purchase shall not include an acquisition by tax deed, foreclosure, exchange, or other such means by which the consideration is other than cash.
- U. Purchase Amount: the dollar amount approved by the County Administrator, or designee, offered to an Owner for the County's Purchase of a Flooded Property, which amount shall be no greater than the Adjusted Appraisal Amount plus any Comparable Replacement Property Premium.
- V. Relocation Funding Advance: an amount no greater than \$5,000 provided to the Owner in advance of a Purchase closing in order to assist the Owner in purchasing and moving to a replacement property
- W. Resolution: the Resolution of Relief For Owners of Flooded Properties adopted by the Board on May 10, 2005.
- X. Restrictive Covenants: the Declaration of Covenants, Restrictions, and Conditions which, as provided in this Policy, sets forth the restrictive use of the Flooded Property after the County's acquisition and which is to be recorded in the Official Records of Leon County as an encumbrance on the Flooded Property to run with the land in perpetuity.
- Y. Written Offer: the letter to an Owner from the County Administrator, or designee, containing the Purchase Amount offered for the County's Purchase of the Flooded Property.
- Z. Written Procedures: the uniform and clear written procedures developed and maintained by the County Administrator, or designee, for the acquisition and management of Flooded Properties in accordance with the Board's directives in this Policy.

Article 3: Responsible Departments

- A. The County Administrator, or designee, shall be charged with the responsibility of developing and maintaining uniform and clear written procedures for the acquisition and management of Flooded Properties in accordance with the Board's directives in this Policy (hereinafter the "Written Procedures").
- B. The Public Works Director, or designee, shall be charged with the following responsibilities:
 - 1. Assuring that the Flooded Properties are acquired and managed in accordance with the directives in this Policy and the Written Procedures;
 - 2. Making the determination of whether any County-owned property is unsuitable for resale or other disposition because of its tendency to flood and should, therefore, be designated as a Flooded Property or, if more appropriate, as a County facility not available for private use by Permit;

3. Approving Permits in accordance with the directives in this Policy and the Written Procedures; and
 4. Executing building permit applications and other such documents on behalf of the County, as property owner, in order to accommodate a Permittee's use of a Flooded Property in accordance with the terms and conditions of an approved Permit.
- C. The County Attorney, or designee, shall be charged with the following responsibilities:
1. Determining the scope of the appraisal assignment and the form of the appraisal report to be prepared for use in the acquisition of Flooded Properties, unless such scope is otherwise established by the Board;
 2. Approving the legal sufficiency of any and all documents related to any transaction pursuant to this Policy; and
 3. Providing any necessary legal advice in the development and implementation of the Written Procedures.

Article 4: Administration of Policy

- A. Program Administrator: The Public Works Director shall assign an individual to act as the Program Administrator with direct oversight of the staff persons assigned to acquire and manage the Flooded Properties in accordance this Policy and the Written Procedures (hereinafter "Acquisition Agents").
- B. Acquisition Consultant: If sufficient Public Works staff is not available to timely fulfill the intent of this Policy, the Public Works Director may retain a qualified acquisition consultant to act on the County's behalf as Program Administrator and/or Acquisition Agents.
- C. Identification of Flooded Properties: The Program Administrator shall be responsible for maintaining the prioritized list of Flooded Properties selected by the Board for future acquisition. In addition, the Program Administrator shall be responsible for assuring that the County-owned Flooded Properties are included in the County's inventory of real property. These responsibilities shall be subject to the following directives:
1. In the event a Flooded Property not yet acquired by the County no longer lies within the unincorporated area of the County due to an annexation or other such means, it shall no longer be deemed a Flooded Property and shall immediately be removed from consideration for Purchase by the County;
 2. In the event an Owner of a Flooded Property requests in writing that they no longer wish for the County to acquire their Flooded Property, it shall immediately be removed from consideration for acquisition by the County; and

3. Upon title to the Flooded Property vesting in the County, Restrictive Covenants shall be prepared and recorded in the Official Records of Leon County as an encumbrance on the Flooded Property to run with the land in perpetuity.

Article 5: Purchase Acquisitions

- A. Scope: This Article shall apply only to those acquisitions of a Flooded Property deemed to be a Purchase, as that term is defined herein.
- B. Appraisals: Prior to the County's Purchase of a Flooded Property, an appraisal of each Flooded Property shall be obtained from a licensed, state-certified appraiser with directions to the appraiser of the following scope of appraisal:
 1. The Flooded Property shall be appraised under the assumption that the property is not located in a flood hazard area and has experienced no known flood events (hereinafter the "Appraisal Assumption");
 2. Notwithstanding the Appraisal Assumption, the appraiser's opinion of value shall accurately reflect the actual physical condition of the improvements as well as any other known conditions, except flooding, regarding the physical, legal, or economic characteristics of the Flooded Property;
 3. The appraiser shall strictly follow the guidelines in the Uniform Standards of Professional Appraisal Practice in making it clear to the reader of the appraisal that:
 - a. the Owner has applied for flood relief under the County's Flooded Property Acquisition and Management Program;
 - b. the purpose of the appraisal is for use by the County in determining a Purchase Amount for the Flooded Property; and
 - c. the appraiser's opinion of value assumes, as directed by the County, that the property is not located in a flood hazard area and has experienced no known flood events.
 4. The appraiser shall include in his report, for use by the Acquisition Agent, a list of comparable properties for sale in the same or similar neighborhood as that of the Flooded Property (hereinafter "Comparable Replacement Properties"). The list of Comparable Replacement Properties shall include such information as is sufficient for the Acquisition Agent to confirm the availability of the property for sale.
- C. Duplication of Benefits
 1. Upon the initial contact of the Owner, the Owner shall be requested to provide any and all information necessary to determine if the Purchase will result in any Duplication of Benefits, as that term is herein defined.

2. Such information shall be provided from the Owner in the form of a duly executed Affidavit of Owner(s) For Duplication of Benefits.

D. Comparable Replacement Property Analysis

1. Upon receipt of a Flooded Property appraisal, an analysis of the Comparable Replacement Properties included in the appraisal shall be completed to assist in the determination of a fair and reasonable amount to offer the Owner for the Purchase of the Flooded Property.
2. The Comparable Replacement Property Analysis shall include a dollar amount in excess of the Adjusted Appraisal Amount which would be necessary to pay to the Owner at closing in order to provide the Owner with sufficient funds to purchase a Comparable Replacement Property (hereinafter the “Comparable Replacement Property Premium”).

E. Purchase Offers

1. The County Administrator, or designee, shall be authorized to approve and execute any and all documents necessary to complete the Purchase of any Flooded Property for which the Purchase Amount is no greater than the Adjusted Appraisal Amount plus any Comparable Replacement Property Premium (hereinafter the “Purchase Amount”).
2. Upon the approval of the Purchase Amount by the County Administrator, or designee, the Written Offer shall be delivered to the Owner, by hand delivery if feasible. The Written Offer shall explain that the Purchase offer is made on a voluntary basis and that the County will not pursue condemnation proceedings if the Owner rejects the Purchase offer.
3. The Owner shall be allowed 30 (thirty) days after receipt of the Written Offer within which to accept or reject the Written Offer. Written Offers shall be deemed rejected if not accepted within 30 (thirty) days after the Owner’s receipt of the Written Offer.
4. Upon an Owner’s rejection of the Written Offer, written confirmation from the County shall be provided to the Owner, and the Owner’s property shall thereafter be removed from any further consideration by the County for Purchase as a Flooded Property.

F. Purchase Closings

1. Inspection and Possession of Flooded Property

a. Inspection

- 1) prior to closing, the Flooded Property shall be inspected to insure that all fixtures and other such real property items considered in the appraiser's opinion of value are found to be present and in the same condition as reflected in the appraisal on the date of value.
- 2) in the event such items have been found to be removed or destroyed, the closing shall not occur until such time as the items have been restored or until the Purchase Amount has been adjusted to reflect the removal of such items.

b. Possession

- 1) no closing shall be completed until such time that the Owner has vacated the Flooded Property.
- 2) the Owner shall turn over possession of the Flooded Property to the County at closing.

2. Relocation Funding Advance

- a. in accordance with the Board's findings and declarations as set forth in the Resolution, the County may provide funds to the Owner in advance of closing in the event the Owner is in need of such advance funds for assistance in purchasing and moving to a replacement property or otherwise vacating the Flooded Property prior to closing (hereinafter the "Relocation Funding Advance"); provided, however, that the Relocation Funding Advance shall be:

- 1) no greater than \$5,000;
- 2) approved by the County Administrator, or designee;
- 3) documented in writing and in a format which will allow such document to be recorded as a lien in the Official Records of Leon County; and
- 4) paid to the County from the Owner's sale proceeds at closing.

- b. in the event the closing does not occur, for whatever reason, the Relocation Funding Advance shall be returned by the Owner to the County or, if not able to be returned, be recorded as a lien on the Flooded Property.

3. Title: the County's Purchase of the Flooded Property shall be contingent on the following:
 - a. The County, at its expense, shall obtain a title insurance commitment for the Flooded Property (hereinafter the "Commitment") issued by a title insurance company chosen at County's sole discretion (the "Title Company"), and upon Closing, an ALTA owner's title insurance policy shall be issued to the County, in the amount of the Purchase Amount, for fee simple title subject to exceptions as stated below;
 - b. The Owner shall convey marketable title to the Flooded Property by General Warranty Deed subject only to (i) zoning, restrictions, prohibitions, and other limitations imposed by governmental authority; (ii) restrictions and matters appearing on the plat or common to the subdivision, if any; (iii) public utility easements of record; (iv) property taxes for the year of Closing and subsequent years; and (v) any and all restrictions of record, exceptions, or other such matters as are set forth in the Commitment;
4. Closing Costs
 - a. Any and all taxes and special assessments which are a lien upon the Flooded Property on or prior to the date of closing (except current ad valorem taxes which are not yet due and payable) shall be paid by the Owner. The Owner shall pay any and all current ad valorem taxes levied against the Flooded Property in accordance with Section 196.295, Florida Statutes, as may be amended from time to time.
 - b. In accordance with the Board's findings and declarations as set forth in the Resolution, the County shall pay all documentary stamp taxes and transfer taxes payable in connection with the conveyance of the Flooded Property, the cost to record the deed, the cost for title insurance, and the cost of any survey.
 - c. The Owner shall be required to pay for the costs to cure any title or survey defects and for the cost of recording any documents to cure such defects.

Article 6: Management and Use of Flooded Properties

- A. Scope: This Article shall apply to the management and use of any and all County-owned Flooded Properties.
- B. Management
 1. Upon title to a Flooded Property vesting in the County, the Program Administrator shall be responsible for preparing and recording Restrictive Covenants in the Official Records of Leon County as an encumbrance on the Flooded Property to run with the land in perpetuity and which, at a minimum, shall restrict the use of the Flooded Property as follows:

- a. the Flooded Property shall be maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices; and
 - b. no new structures shall be erected on the Flooded Property other than: (i) a public facility that is open on all sides and functionally related to a designated open space; or (ii) a structure that the County approves in writing before the commencement of the construction of the structure.
2. Upon the Owner's vacation of the Flooded Property, any and all keys to the Flooded Property shall be turned over to the County.
 3. If determined by the Public Works Director to be in the best interest of the County, any improvements on the Flooded Property may be demolished, razed, or otherwise removed at the County's expense.
 4. The Program Administrator shall be responsible for safely securing and managing the Flooded Property in accordance with the Written Procedures.

C. Use by Permit

1. In the event an individual or legal entity is interested in using a County-owned Flooded Property, an application for a Special Restricted-Use Permit ("Permit") may be submitted to the Program Administrator for consideration in accordance with the Written Procedures.
2. Upon approval of a Permit by the Public Works Director, the Program Administrator may authorize the use of a Flooded Property subject to the terms and conditions of the Permit; provided, however, that the Permit shall, at a minimum, contain the following provisions:
 - a. that the consideration for Permittee's use of the Flooded Property shall be Permittee's covenant to use and maintain the Flooded Property in accordance with the terms and conditions as set forth in the Permit and, as such, Permittee shall not be required to pay any fees for the Permit.
 - b. that the use of the Permit Area shall be compatible with open space, recreational, or wetlands management practices and shall prohibit the construction or installation of any of new structures other than the following: (i) a public facility that is open on all sides and functionally related to a designated open space; or (ii) a structure that the County approves in writing before the commencement of the construction of the structure, and shall be limited and restricted to those activities specified in the Permit;
 - c. that the term of the Permit shall commence on the date on which the last of the parties signs the Permit and shall continue indefinitely thereafter until the Permit is terminated in accordance with the terms provided therein;

- d. that the Permit is a license for the use of the Permit Area and does not grant any permanent possessory interest in real property, nor shall the Permit be construed as conveying any real property interest in the Permit Area.
- e. that the County reserves the right to use or allow others to use any part of the Permit Area for any purpose, provided, however, that such use does not materially interfere with Permittee's authorized use, and that a final determination of conflicting uses is reserved to County at County's sole discretion;
- f. that the Permit shall not be assignable or transferable;
- g. that, with regard to the use of the Permit Area, Permittee shall comply with all applicable federal, state, and local laws, regulations, and standards;
- h. that Permittee shall assume all risk of loss to any improvements, equipment, or personal property constructed, placed, or stored on, or in, the Permit Area;
- i. that, if the Permit authorizes Permittee to construct or place improvements or equipment on, or in, the Permit Area, Permittee shall, at Permittee's expense, procure and maintain for the tenure of the Permit insurance in the minimum coverage and amounts as provided in the Permit; and
- j. that Permittee shall indemnify and hold harmless the County from any and all claims against the County which arise from, or are in connection with, the performance by Permittee of the privileges, covenants, and responsibilities pursuant to the Permit.
- k. that Permittee acknowledges that the Permit Area is within a Flooded Property, as designated by the Program, and has been, is currently, or may be in the future, prone to continued flooding.

D. Misuse of Flooded Property

1. Upon the discovery of a Flooded Property being used in a manner inconsistent with the Restrictive Covenants or in violation of the terms and conditions of an approved Permit, the Public Works Director, in conjunction with appropriate legal support from the County Attorney, shall be authorized to take any corrective action deemed to be in accordance with the terms and conditions of the Permit, if applicable, and in the best interest of the County including, but not limited to, treating the Permittee, if applicable, or other violator as a trespasser.